

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Elections/Restrictions

In the Office Action dated 09/22/2008, the Office stated that claims 62-96 did not encompass the elected species. In particular, the Office noted that claim 62 was directed to a non-elected species, and that claims 63-96 depend from claim 62. Applicant notes that claims 65, 75-77, and 83 have been amended to depend from claim 61. Applicant further submits that claims 65-83 and 86-89 encompass the elected species without being explicitly directed toward and non-elected species. Accordingly, Applicant respectfully requests that claims 65-83 and 86-89 be reconsidered for substantive examination.

§102 Rejections

Claim 61 was rejected under 35 U.S.C. §102(b) as being unpatentable over Sirimanne et al. (U.S. Pub. No. 2002/0107437). Under MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. In addition, the elements in the prior art reference must be arranged as required by the claim. MPEP 2131 (emphasis added).

Applicant submits that Sirimanne et al. fails to teach or suggest all of the limitations recited in amended independent claim 1, particularly in the arrangement recited in the claim. For instance, amended independent claim 1 recites injecting a slurry into the biopsy site, where the slurry comprises “a solid echogenic polymer powder suspended in a liquid.” Sirimanne et al. fails to teach or suggest such limitations, among others, particularly in the arrangement recited in amended claim 1. Accordingly, Sirimanne et al. fails to anticipate amended claim 1 in accordance with MPEP 2131. Applicant therefore respectfully requests that the rejection be withdrawn.

Applicant further notes that the dependent claims include additional limitations not taught or suggested in the art of record, thus forming independent basis for novelty.


Conclusion

While several distinctions have been noted over the art of record, Applicant notes that there are several other limitations recited in the present claims which are neither taught nor suggested by the art of record. Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513)369-4811 or via e-mail at aulmer@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,


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